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Internal Revenue Service

Department of the Treasury

Significant Index 414.07-00

Washington, DC 20224

\*\*\*\*\*Person to Contact: \*\*\*\*\*  
\*\*\*\*\* ID #\*\*\*\*\*  
\*\*\*\*\* Telephone Number: (202) 622-\*\*\*\*\*

Refer Reply to: OP:E:EP:T:2

Attn: \*\*\*\*\*  
Director

Date: MAY 4

Legend:

State A = \*\*\*\*\*  
Employer M = \*\*\*\*\*  
Agency A = \*\*\*\*\*  
Division B = \*\*\*\*\*  
Agency C = \*\*\*\*\*  
Plan X = \*\*\*\*\*  
Act S = \*\*\*\*\*

Dear M\*\*\*\*\*

This is in response to a ruling request dated May 27, 1998, submitted on your behalf by your authorized representative, requesting a ruling under section 414(d) of the Internal Revenue Code (Code).

The following facts and representations have been submitted on your behalf:

Agency A is an agency of State A which administers Plan X, a defined benefit plan for public school teachers and administrators. Membership in Agency A consists primarily of certified teachers, non-certified staff and administrators employed by school districts in State A. Plan X meets the requirements set forth in section 401(a) of the Code.

In 1997, the General Assembly of State A passed and the Governor signed, Act S, the stated purpose of which was to further define employment with a school under Agency A to include employees of a school district working for privatized enterprises providing services to the school district and the employees of certain educational nonprofit organizations providing similar services.

Employer M is licensed and regulated by Division B, a division of Agency C. Division B sets the criteria for the selection of board members of Employer M. Division B also provides administrative/program support upon request, and sets accountability procedures, standards and audits. Employer M receives approximately

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94 percent of its funds from federal and State A governmental programs.

Employer M serves primarily children with developmental disabilities and other special needs. If Employer M did not serve these individuals, Division B, Agency C or local public schools would be responsible for serving them. Teachers and therapists employed by Employer M must meet the same certification and licensing requirements as teachers and therapists employed by public schools in State A.

Agency A has received a request from Employer M to participate in Plan X by virtue of its eligibility to be a member of Agency A.

Based on the foregoing facts and representations, your authorized representative has requested a ruling that participation of the employees of Employer M in Plan X, administered by Agency A, will not jeopardize its status as a government plan within the meaning of section 414(d) of the Code.

Section 414(d) of the Code provides that governmental plan means a plan established and maintained for its employees by the Government of the United States, by the government of any state or political subdivision thereof, or by any agency or instrumentality of any of the foregoing.

Revenue Ruling 89-49, 1989-1 C.B. 117 provides that a plan will not be considered a government plan merely because the sponsoring organization has a relationship with a governmental unit or some quasi-governmental power. One of the most important factors to be considered in determining whether an organization is an agency or instrumentality of the United States or any state or political subdivision thereof is the degree of control that the state or federal government has over the organization's everyday operations. Other factors include: (1) whether there is specific legislation creating the organization; (2) the source of funds for the organization; (3) the manner in which the organization's trustees or operating board are selected; and (4) whether the applicable governmental unit considers the employees of the organization to be employees of the applicable governmental unit. Although all of the above factors are considered in determining whether an organization is an agency or instrumentality of a government, the mere satisfaction of one or all of the facts is not necessarily determinative.

In this case, State A and its agencies exercise a considerable degree of control over Employer M, both in its day-to-day operations and through fiscal means. For instance, Employer M is licensed and regulated by Division B, which is a division of Agency C, a State A agency and which also sets the criteria for the selection of Employer M's Board members. Division B and Agency C also provide administrative/program support and set accountability procedures,

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standards and audits. Employer M's teachers and therapists must meet the same certification and licensing requirements as their counterparts employed by the public schools of State A. Furthermore, Employer M in effect is fiscally controlled by virtue of receiving 94 percent of its funding from federal and State A governmental programs.

In addition, Employer M fulfills a responsibility which would otherwise be met by local State A public schools or a State A agency, or Division B.

Although no specific State A legislation created Employer M, and Employer M's employees are not definitively considered employees of the applicable governmental unit referred to in Revenue Ruling 89-49, one or all of the revenue ruling factors need not be satisfied in making a determinative conclusion. Here, the extent of control by State A over Employer M's everyday operations and the nature of Employer M's funding are sufficient to conclude that Employer M may be considered to be an agency of State A for purposes of section 414(d) of the Code and that including the employees of Employer M in Plan X would not cause Plan X to fail to be considered a government plan.

Accordingly, based on the foregoing law and facts, we conclude with respect to your ruling request that the participation of the employees of Employer M in Plan X, administered by Agency A, will not jeopardize Plan X's status as a governmental plan within the meaning of section 414(d) of the Code. No opinion is expressed as to the federal tax consequences of the transaction described above under any other provisions of the Code.

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

Sincerely yours,

**(signed) JOYCE E. FLOYD**

Joyce E. Floyd  
Chief, Employee Plans  
Technical Branch 2

Enclosures:

Deleted Copy of this Letter  
Notice of Intention to Disclose

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